

Application No. 09/878,707
Amendment dated November 7, 2005
Reply to Office Action of June 6, 2005

AMENDMENTS TO THE DRAWINGS:

The attached sheet of drawings includes changes to Fig. 5. This sheet, which includes Fig 5, replaces the original sheet including Fig. 5.

Attachment: Replacement Sheet
Annotated Sheet Showing Changes

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REMARKS

Status Of Application

Claims 1-33 are pending in the application; the status of the claims is as follows:

The specification is objected to because of informalities.

Claims 24 and 33 are objected to because of informalities.

Claim 30 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

Claims 2, 3, 12, and 26 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

Claims 1-30 and 33 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

Claims 20, 21, 24-26, 28, and 30-32 are rejected under 35 U.S.C. § 102(b) as being anticipated by article, Uses and consequences of electronic markets: an empirical investigation in the aircraft parts industry, DEC 1998, MIS Quarterly, v.22, n.4, p.471 (37 pages) to Choudhury ("Choudhury").

The indication, in the Office Action, that the Examiner has objections to the drawings filed on June 11, 2001 as column headings in Fig. 5 are not aligned and as failing to comply with 37 C.F.R. 183(a), is noted. Applicants submit herewith the necessary Replacement drawing for Fig. 5.

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Claim Amendments

Claims 2, 3, 12, 26, and 33 have been amended to improve the form thereof. Claim 20 has been amended to correct antecedent basis. These changes are not necessitated by the prior art, are unrelated to the patentability of the invention over the prior art, and do not introduce any new matter.

Claim Objections

Claim 24 has been amended so that it ends with a period.

Claim 33 has been amended to correct the informalities identified in the Office Action.

35 U.S.C. § 112 Rejections

The rejection of claim 30 under the first paragraph of 35 U.S.C. § 112 as failing to comply with the written description requirement as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention, is respectfully traversed based on the following.

It is respectfully submitted, that 'surplus' refers to the products a buyer has in excess of their needs. This interpretation find support throughout the specification, e.g., paragraphs [0018] and [0030]. Nevertheless, claim 30 has been amended to recite "determining for each buyer, products for which the buyer is a supplier, based on a desired inventory profile for that buyer." Although the amended claim language does not differ in scope from the prior claim language, it more closely parallels the language of the specification.

Accordingly, it is respectfully requested that the rejection of claim 30 under the first paragraph of 35 U.S.C. § 112 as failing to comply with the written description

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requirement as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention, be reconsidered and withdrawn.

The rejection of claims 2, 3, 12, and 26 under the second paragraph of 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention, is respectfully traversed based on the following.

Claim 2 has been amended to recite “a step of comparing the supply for each of said determined product classes to a respective threshold value, wherein designating a market comprises designating a market for only those determined product classes which exceed the supply threshold values.” As amended, claim 2 further limits claim 1 by adding a step of comparing the available supply of a product class to a threshold value and refines the designating step by only designating a market when the supply exceeds the threshold. The amendment also clarifies that the ‘product classes’ are ‘designated product classes.’

Claims 3 and 12 have been amended to recite that the “step of designating a market comprises designating a plurality of markets for said product classes.”

Claim 26 has been amended to delete “, and two or more of current inventory information, buyer sales history, a manual indication by the buyer.”

It is respectfully submitted that the amendments to claims 2, 3, 12, and 26 overcome the §112 rejections thereof. Accordingly, it is respectfully requested that the rejection of claims 2, 3, 12, and 26 under the second paragraph of 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention, be reconsidered and withdrawn.

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35 U.S.C. § 101 Rejection

The rejection of claims 1-30 and 33 under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter, is respectfully traversed based on the following.

A recent decision of the BPAI has eliminated any “technological arts” requirement. Thus, for a process claim reciting an abstract idea or mathematical algorithm to be statutory, the claimed process must be limited to a practical application of the abstract idea or mathematical algorithm. A claim is limited to a practical application when the method, as claimed, produces a concrete, tangible and useful result; *i.e.*, the method recites a step or act of producing something that is concrete, tangible and useful. See MPEP 2106IV B 2 (b) ii.

The courts have held that claims drawn to a long-distance telephone billing process containing mathematical algorithms were held to be directed to patentable subject matter because "the claimed process applies the Boolean principle to produce a useful, concrete, tangible result without pre-empting other uses of the mathematical principle." *AT&T Corp. v. Excel Communications, Inc.*, 172 F.3d 1352, 1358, 50 USPQ2d 1447, 1452 (Fed. Cir. 1999); and that “[T]ransformation of data, representing discrete dollar amounts, by a machine through a series of mathematical calculations into a final share price, constitutes a practical application of a mathematical algorithm, formula, or calculation, because it produces 'a useful, concrete and tangible result' -- a final share price momentarily fixed for recording and reporting purposes and even accepted and relied upon by regulatory authorities and in subsequent trades." *State Street*, 149 F.3d at 1373, 47 USPQ2d at 1601. See MPEP 2601 II A.

It is respectfully submitted that the present claims recite a process that produces a useful, concrete, and tangible result – the creation of a market for products in which there is sufficient supply and/or demand to justify creating the market, and the notification of potential buyers and suppliers of the market. For example, independent claim 1 recites,

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inter alia, "... determining the ones of said product classes which have said demand exceeding said threshold values; ... designating a market for each of said determined ones of said product classes, and for each said market, notifying the ones of said dealers who have a demand for the product class of the market." Claims 11, 20, and 33 include analogous limitations.

Accordingly, it is respectfully requested that the rejection of claims 1-30 and 33 under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter, be reconsidered and withdrawn.

35 U.S.C. § 102(b) Rejection

The rejection of claims 20, 21, 24-26, 28, and 30-32 under 35 U.S.C. § 102(b) as being anticipated by Choudhury, is respectfully traversed based on the following.

The present claims are directed to a demand driven marketplace, wherein the demand for a product is determined, and then if there is sufficient demand, a marketplace is created to supply products to meet the demand. Choudhury differs from the present claims at a fundamental level, in that Choudhury teaches a supply driven marketplace. For example, Choudhury enables suppliers or service providers to post information about their available parts and/or services. Consumers may the search for parts or services they need. That is, the supply is made available, and the consumers, i.e., the demand, seek out the supply.

Moreover, Choudhury fails to disclose all elements of the subject claims. For example, Choudhury states "by aggregating the expected consumption forecasts over the size of its fleet, the owner can decide which parts, and in what quantities, to stock." *See* Purchase for Inventory; page 483, column 1. That is each individual owner of a fleet of aircraft can determine for itself what parts to keep in inventory by aggregating the inventory needed for all aircraft in the fleet. There is no disclosure that the system aggregates the demand over multiple owners. In contrast, claim 20 requires, *inter alia*,

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“collecting inventory information from each of a plurality of buyers” and “determining a current product demand for each buyer.” Because Choudhury does not disclose, teach, or suggest the features of claim 20, it is respectfully submitted that Choudhury is distinguished by claim 20 as well as by claims 21 and 24-26 which depend therefrom.

Accordingly, it is respectfully requested that the rejection of claims 20, 21, 24-26, 28, and 30-32 under 35 U.S.C. § 102(b) as being anticipated by Choudhury, be reconsidered and withdrawn.

CONCLUSION

Wherefore, in view of the foregoing amendments and remarks, this application is considered to be in condition for allowance, and an early reconsideration and a Notice of Allowance are earnestly solicited.

This Amendment does not increase the number of independent claims, does not increase the total number of claims, and does not present any multiple dependency claims. Accordingly, no fee based on the number or type of claims is currently due. However, if a fee, other than the issue fee, is due, please charge this fee to Sidley Austin Brown & Wood LLP's Deposit Account No. 18-1260.

Any fee required by this document other than the issue fee, and not submitted herewith should be charged to Sidley Austin Brown & Wood LLP's Deposit Account No. 18-1260. Any refund should be credited to the same account.

If an extension of time is required to enable this document to be timely filed and there is no separate Petition for Extension of Time filed herewith, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) for a period of time sufficient to enable this document to be timely filed.

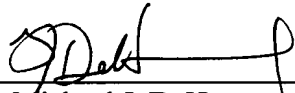
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Any other fee required for such Petition for Extension of Time and any other fee required by this document pursuant to 37 C.F.R. §§ 1.16 and 1.17, other than the issue fee,

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and not submitted herewith should be charged to Sidley Austin Brown & Wood LLP's
Deposit Account No. 18-1260. Any refund should be credited to the same account.

Respectfully submitted,

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Dealer #2

Product Type	Current Inventory	Weekly Sales																	
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
A	4	4	6	5	4	1	0	3	2	1	5	2	3	1	6	4	2	0	2
C	6	4	4	5	1	3	6	6	2	1	1	7	4	0	3	2	2	3	1
D	0	1	0	1	0	2	1	0	0	1	1	2	0	1	1	0	0	1	2
F	5	3	6	1	5	3	5	6	4	2	1	3	2	1	1	5	3	2	6
G	9	3	4	0	2	3	4	2	1	1	0	3	2	1	2	1	3	0	2
H	8	2	4	1	3	2	1	1	3	2	4	0	2	1	4	3	2	1	1
J	0	1	3	4	1	2	3	4	1	4	2	1	4	2	2	1	1	3	2
K	4	2	4	5	4	3	5	4	3	2	2	3	1	3	4	2	4	3	3
N	1	3	4	5	1	3	4	3	4	5	4	3	3	2	1	4	5	3	3
O	3	2	1	4	4	6	5	4	6	8	4	4	2	5	4	6	5	4	3

Fig. 5